

City Council
Atlanta, Georgia

08-0-0653

AN ORDINANCE
BY: ZONING COMMITTEE

U-08-14

**AN ORDINANCE GRANTING A SPECIAL USE PERMIT
FOR THE TRANSFER OF EXCESS DEVELOPMENT
DENSITY FROM PROPERTY LOCATED AT 990
PEACHTREE STREET (SENDING PARCEL) TO
PROPERTY LOCATED AT 207, 211, 219, 223 AND 225 13TH
STREET (RECEIVING PARCEL); AND FOR OTHER
PURPOSES.**

WHEREAS, the City Council finds that it is in the public interest to allow the owners of historic designated properties to transfer their development density to adjacent properties; and

WHEREAS, the Atlanta Historical Society, Inc. (Atlanta History Center), through its subsidiary AHA/MMH, LLC owns the entire block at 990 Peachtree Street, upon which is located the Margaret Mitchell House and Commercial Row; and

WHEREAS, nominations are pending to expand the existing LBS property and create a new HBS property so that the entire block will be designated HBS and LBS and once designated the transfer of development rights can occur; and

WHEREAS, the Atlanta Historical Society seeks to transfer a portion of the residential development rights from the property at 990 Peachtree Street to a receiving property located at 207, 211, 219, 223 and 225 13th Street; and

WHEREAS, the sending property at 990 Peachtree Street will not be altered by the transfer of development rights and the LBS designation will assist in the protection of the Mitchell House and its Peachtree Street views for the public; and

WHEREAS, the owners of the sending and receiving parcel will enter into an agreement within 30 days after the approval of the special permit to transfer excess development rights and shall provide the executed affidavit to the City of Atlanta Bureau of Planning and the City of Atlanta Law Department to be recorded in the real property records in the Office of the Clerk of Superior Court, Fulton County, Georgia; and

WHEREAS, the transfer of development rights will result in 116, 781 square feet of residential development to be transferred from at 990 Peachtree Street to a receiving property located at 207, 211, 219, 223 and 225 13th Street.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

SECTION 1. Under the provisions of (Section 16-28.023 of the Zoning Ordinance of the City of Atlanta, a Special Use Permit for a Transfer of Excess Development Rights is hereby approved. Said use is granted to 13th Street Holdings, LLC, its successors, assigns and all subsequent owners. Those Excess Development Rights as specified in the document attached as Exhibit A. The sending and receiving parcels are more particularly described by the attached legal descriptions and/or surveys.

SECTION 2. That this amendment is approved under the provisions of Section 16-25.003 of the Zoning Ordinance of the City of Atlanta, entitled "Special Use Permits, Procedural Requirements", and the Director, Bureau of Buildings, shall issue a building permit only in compliance with the applicable provisions of this part. The Special Use Permit hereby approved does not authorize the violation of any zoning district regulations. District regulation variances can be approved only by application to the Board of Zoning Adjustment.

SECTION 3. That the Special Use Permit, including the executed agreements shall be recorded with the Clerk of Superior Court of Fulton County in accordance with the provisions of Section 16-28.023 (4).

SECTION 4. That the Special Use Permit shall be recorded by the Bureau of Planning on the official zoning map (referencing both the Donor and Recipient parcels) in accordance with the provisions of Section 28.023 (4).

SECTION 5. That all ordinances or parts of ordinances in conflict with the terms of this ordinance are hereby repealed.

LEGAL DESCRIPTION
990 PEACHTREE STREET, N.E.
ATLANTA, GA
DONOR/SENDING PARCEL

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U-08-014

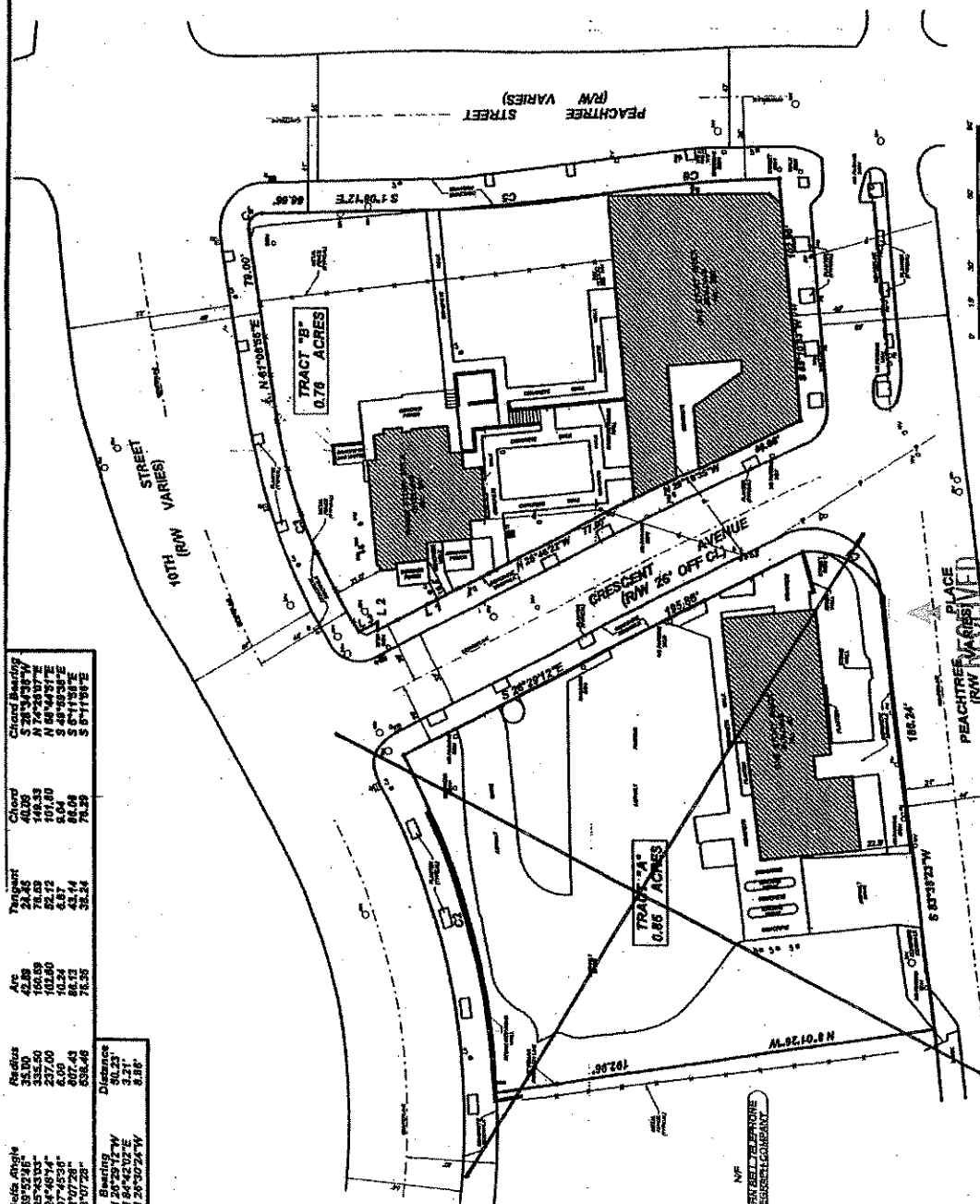
ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 106 of the 17th District of Fulton County, Georgia, and being more particularly described as follows:

BEGINNING at the point of intersection of the northeasterly right-of-way line of Crescent Avenue (variable width right-of-way) and the northerly right-of-way line of Peachtree Place (variable width right-of-way), said point being the POINT OF BEGINNING, and running thence in a northwesterly direction along Crescent Avenue the following courses and distances: North 26°16'35" West a distance of 80.08 feet to a point; running thence North 26°46'22" West a distance of 77.00 feet to a point; running thence North 26°29'12" West a distance of 50.23 feet to a 1 inch hollow pipe found; running thence North 84°42'02" East a distance of 3.21 feet to a point; running thence North 26°30'24" West a distance of 8.86 feet to a point; thence leaving said right-of-way and running thence in a northeasterly direction along 10th Street (variable width right-of-way) along the arc of a curve to the right, said arc having a chord bearing of North 68°44'51" East and a distance of 101.80 feet, and a radius of 237.00 feet an arc distance of 102.60 feet to a point; running thence North 81°08'56" East a distance of 79.00 feet to a point; running thence along the arc of a curve to the right, said arc having a chord bearing of South 49°59'38" East a distance of 9.04 feet; and a radius of 6.00 feet, an arc distance of 10.24 feet to a point; thence leaving said right-of-way and running in a southeasterly direction along Peachtree Street (variable width right-of-way) the following courses and distances: South 01°08'12" East a distance of 66.66 feet to a point; running thence along the arc of a curve to the left, said arc having a chord bearing of South 05°11'56" East and a distance of 86.06 feet, and a radius of 607.43 feet, an arc distance of 86.13 feet to a point; running thence along the arc of a curve to the right, said arc having a chord bearing of South 05°11'56" East and a distance of 76.29 feet and a radius of 538.46 feet, an arc distance of 76.35 feet to a point; thence leaving said right-of-way and running thence in a southwesterly direction along Peachtree Place (variable width right-of-way) South 85°10'32" West a distance of 102.96 feet to a point, said point being the POINT OF BEGINNING.

Said tract contains 0.76 acres as shown on and described according to that certain ALTA Survey for The Margaret Mitchell Museum, Inc., dated July 12, 2004, prepared by Tru-Line Surveying Inc. and bearing the signature and seal of W. E. Klontz, Ga. Registered Land Surveyor No. 2166.

SITE PLAN

Line	Curve	Daily Angle	Radius	Ar.	Tangent	Chord	Chord Bearing
1	1	65°52'16"	35.10	42.48	24.65	40.00	S 28°14'38"W
2	2	25°43'03"	335.50	160.58	78.63	146.33	N 4°26'07"E
3	3	24°46'14"	237.00	102.60	82.12	101.80	N 48°44'51"E
4	4	97°43'26"	6.09	10.24	4.17	5.94	S 49°19'35"E
5	5	57°52'38"	4.43	7.35	3.04	4.25	S 64°16'03"E
6	6	6°57'23"	634.46	78.33	38.24	78.25	S 67°11'02"E
		Distance					
Line	Bearing	Distance					
1	N 84°42'02"E	3.21					
2	N 84°42'02"E	8.18					
3	N 26°30'24"W						



SURVIVORS CERTIFICATION

[illegible]

LEGEND

- [illegible]

अनुसूची

NOTES:
THE FIELD DATA UPON WHICH THIS PLAY IS BASED
WAS OBTAINED USING A THEODOLITE AND E.I. AL
AND HAS A LINEAR PRECISION RATIO OF ONE IN
100,000 PER FOOT AND AN ANGULAR ERROR OF
ONE SECOND PER ANGLE AND HAS ACQUIRED
USING THE CONTAMINABLE FIELD

THIS PLAT HAS BEEN CHECKED FOR MATHEMATICAL ACCURACY AND CLOSER WITHIN ONE FT. IN 100,000 FEET.

READINGS SHOWN ARE CALCULATED FROM ANGLES TURNED BASED ON A SINGLE MAGNETIC OBSERVATION.

THIS PROPERTY IS NOT LOCATED IN A.W.A.

• 300-2000 瓦特電熱器

[illegible]

TRULLINE SURVEYING INC.

2070 AFTIC PARKWAY
SUITE 505
KENNESAW, GA 30152
PHONE (770) 819-8732
FAX (770) 819-8731



IN MY OPINION, THIS PLAY IS A CORRECT REPRESENTATION OF THE LAND PLATTED AND HAS BEEN PREPARED IN ACCORDANCE WITH THE USUAL STANDARDS AND CONVENTIONS OF THE PROFESSION.

MAR 26 2006

James
Lear

U-08-014

ALTA SURVEY FOR
THE MARGARET MITCHELL MUSEUM, INC.

LAND LOT:	166	SCALE:	1" = 30'
DISTRICT:	17TH	DATE:	07/28/04
SECTION:		DRAWN BY:	MM
COUNTY:	FULTON	CHECKED BY:	WEC
STATE:	GEORGIA	JOB NO:	01-3465

Affidavit With Respect to Real Property
Exhibit "A" -1
Legal Description of Receiving Property

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ALL OF THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 106, 17th District, City of Atlanta, Fulton County, Georgia, and more particularly described as follows:

COMMENCING at a one-half-inch (1/2") rebar found at the intersection of the southerly right-of-way line of Thirteenth Street, N.E. (a 40-foot public right of way) and the westerly right-of-way line of Piedmont Avenue, N.E. (a _____-foot public right of way); THENCE running North 88° 13' 05" West along the southerly right-of-way line of Thirteenth Street, N.E. for a distance of 408.87 feet to a one-half-inch (1/2") iron pin placed and the TRUE POINT OF BEGINNING.

FROM THE TRUE POINT OF BEGINNING THUS ESTABLISHED; THENCE departing the southerly right-of-way line of Thirteenth Street, N.E. and running South 01° 53' 05" West for a distance of 178.00 feet to a one-half-inch (1/2") iron pin placed; THENCE running North 88° 21' 13" West for a distance of 32.08 feet to a one-half-inch (1/2") rebar found; THENCE running North 88° 21' 13" West for a distance of 31.36 feet to a one-half-inch (1/2") rebar found; THENCE running North 87° 23' 49" West for a distance of 35.96 feet to a one-inch (1") crimp top pipe found; THENCE running North 88° 39' 15" West for a distance of 72.00 feet to a point; THENCE running North 87° 36' 41" West for a distance of 36.00 feet to a one-half-inch (1/2") iron pin placed; THENCE running North 01° 41' 18" East for a distance of 178.68 feet to a one-half-inch (1/2") rebar found on the southerly right-of-way line of Thirteenth Street, N.E.; THENCE running South 88° 39' 22" East along said right-of-way line for a distance of 35.98 feet to a three-quarters-inch (3/4") open top pipe found; THENCE running South 87° 30' 06" East and continuing along said right-of-way line for a distance of 72.23 feet to a point; THENCE running South 87° 30' 06" East and continuing along said right-of-way line for a distance of 36.00 feet to a 3/4" open top pipe found; THENCE running South 89° 36' 46" East and continuing along said right-of-way line for a distance of 31.73 feet to a one-half-inch (1/2") rebar found; THENCE running South 88° 21' 53" East and continuing along said right-of-way line for a distance of 32.08 feet to a one-half-inch (1/2") iron pin placed and the TRUE POINT OF BEGINNING.

SAID TRACT OR PARCEL ENCOMPASSING approximately 0.848 of an acre, or approximately 36,941 square feet, as shown on that certain "ALTA/ACSM Land Title Survey for 13th Street Holdings, LLC, Georgian Bank and Fidelity National Title Insurance Company," prepared by Metro Engineering & Surveying Co., Inc., bearing the seal and certification of James R. Green, Georgia Registered Land Surveyor No. 2543, and dated January 18, 2008.

THE BEARINGS for the foregoing survey are based upon the Georgia State Plane Coordinate System.

Exhibit A

**990 Peachtree Street, N.E. (Sending Property)
Joint Special Use Permit for TDR
Atlanta Historical Society, Inc.**

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**TRANSFER OF DEVELOPMENT RIGHTS CALCULATIONS
FOR
SENDING PROPERTY 990 PEACHTREE STREET, N.E.**

U-08-014

Zoning

SPI-16 Subarea 1 / LBS / HBS within Transit Station Area.

Land Area

Net lot area:	33,017 SF
Gross lot area:	67,269 SF
10 th Street:	11,171
Peachtree St.:	11,160
Crescent Ave.:	6,749
Peachtree Place:	5,172
Net lot area (above):	<u>33,017</u>
Total:	67,269

Residential Development Rights Available

- Base Residential Density:
 $3.2 \text{ (FAR)} \times 33,017 \text{ (net lot area)} = 105,654 \text{ SF}$
- Transit Station Area Residential Density:
 $3.2 \text{ (FAR)} \times 33,017 \text{ (net lot area)} = 105,654 \text{ SF}$
- Total Residential Density based on net lot area = 211,308 SF
- Open Space Residential Bonus:
 $6.4 \text{ (FAR of combined base and transit station)} \times 67,269 \text{ SF (gross lot area)} = 430,522 \text{ SF}$
- Existing residential development: None.
- Total Available Residential Density = 430,522 SF

990 Peachtree Street, N.E. (Sending Property)
Joint Special Use Permit for TDR
Atlanta Historical Society, Inc.

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Total Residential Density Transferred to 13th Street

116,781 SF

Total Residential Density Remaining On Donor Site (990 Peachtree St.)

430,522 SF (available) – 116,781 SF (transferred) = 313,741 SF

Parking

No change from existing conditions.

NOTE: All other development rights also are retained on donor site (990 Peachtree St.) including non-residential, mixed use, and other bonuses not addressed above.

Gross Area Calculation:

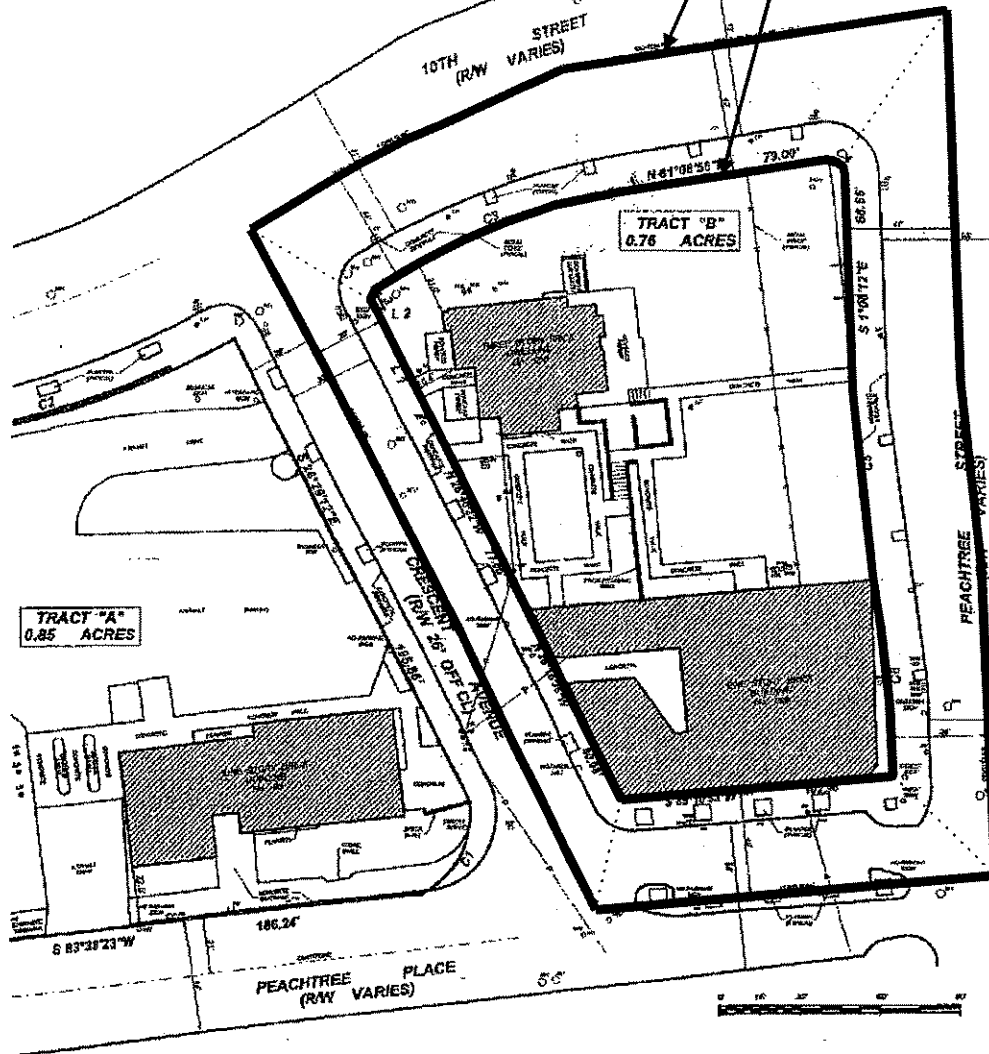
Net Area: 33,017 SF
 10th St: 11,171 SF
 P'tree St: 11,160 SF
 Crescent St: 6,749 SF
 P'tree Pl: 5,172 SF
 Total: 67,269 SF

Gross Area: 67,269 SF

Net Area: 33,017 SF

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HOUSER
 WALKER
 ARCHITECTURE

1473 SPRING STREET
 ATLANTA, GA 30316
 T 404.833.4244
 F 404.870.7337
 info@houserwalker.com
 www.houserwalker.com

PROJECT TITLE:
 MARGARET MITCHELL HOUSE
 PROPERTY

PROJECT NO:
 0732.00

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SHEET TITLE:
 Site Net & Gross Areas

SCALE:
 NTS

DATE:
 03.17.08

SHEET NO.:
 A001

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U-08-024

STATE OF GEORGIA
COUNTY OF FULTON

In Re: Property of AHS/MMH, LLC
Deed Book 38148, Page 593 and
Deed Book 38148, Page 597.

AFFIDAVIT WITH RESPECT TO REAL PROPERTY

In Re: Special Use Permit authorizing Transfer of Development Rights from 990 Peachtree Street, N.E. Atlanta, Georgia 30309 ("Sending Property") to 207, 211, 219, 223 and 225, 13th Street, Atlanta, Georgia 30309 ("Receiving Property").

Personally appeared before me, the undersigned notary public duly authorized to administer oaths, SAL CILELLA, who, after being duly sworn, testifies and deposes as follows:

1. My name is Sal Cilella. I am over the age of eighteen, and I suffer from no disabilities that would prevent me from giving the testimony set forth herein. I have personal knowledge of the facts stated herein, and know them to be true to the best of my knowledge. I give this Affidavit voluntarily.
2. That the deponent is the Manager of AHS/MMH, LLC, a Georgia Limited Liability Company;
3. That AHS/MMC, LLC is the current owner ("Owner") of the parcel of land known as 990 Peachtree Street, N.E., Atlanta, Georgia 30309 as more particularly described on Exhibit "A" attached to this Affidavit and incorporated herein by reference (the "Sending Property");
4. That Owner has been granted Special Use Permit # _____ (the "SUP") with respect to the Sending Property, a true and correct copy of the SUP being attached hereto as Exhibit "B" and incorporated herein by reference;
5. That Owner has entered into a binding agreement with 13th Street Holdings, LLC, the owner of the Receiving Property, with respect to the Sending Property (the "Agreement"), a true and correct copy of which is attached to this Affidavit as Exhibit "C" and incorporated herein by reference;

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6. That the SUP and the Agreement limit and restrict the future development of the Sending Property by way of a transfer of 116,781 square feet of residential development rights to the Receiving Property;

7. That Owner agrees to bind itself and all successors in title, individually and collectively, to the prohibitions against future use of said 116,781 square feet of residential development on the Sending Property as set forth in the SUP and Agreement and further agrees to adhere to the regulations and conditions set forth in the SUP pursuant to 16-28.023 of the Code of Ordinances of the City of Atlanta, and that all other residential, non-residential and mixed-use development rights pertaining to said property shall be retained by the Sending Property;

8. That Owner understands and agrees that any failure to adhere to the regulations of the SUP shall entitle the City of Atlanta to commence appropriate enforcement action;

9. That the SUP shall be binding upon and shall inure to the benefit of the Owner and any and all successors in interest, individually and collectively, to Sending Property;

10. That the limited residential development restrictions set forth herein shall run with the land of the Sending Property in perpetuity and shall transfer automatically without further approval of any kind by the City of Atlanta and be binding upon any and all successors in interest to the Sending Property;

11. That this Affidavit is given with the Owner's understanding that same has been relied upon by the City of Atlanta in the issuance of the SUP benefiting and restricting the Sending Property;

12. That the Owner understands that the Law Department of the City of Atlanta shall cause this Affidavit with all attachments to be recorded in the official real estate records of the Superior Court of Fulton County; and

13. That said recording of this Affidavit is for the purpose of providing notice of record of the provisions of the SUP and the Agreement to all successors in interest and interested parties, and specifically to provide notice of the binding effect of these provisions upon the Owner and all successors in interest to the Property.

Further affiant sayeth not.

Sworn to and subscribed
before me this _____ day of
_____, 2008.

Notary Public
[NOTARIAL SEAL]

_____(SEAL)
SAL CILELLA
Manager
AHS/MMH, LLC



March 25, 2008

Ms. Charletta Wilson-Jacks
City of Atlanta Bureau of Planning
55 Trinity Avenue, Suite 3350
Atlanta, Georgia 30303

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Re: Special Use Permit Application U-08- 014 (the "Application") for the Transfer of Development Rights from 990 Peachtree Street, N.E., Atlanta, Georgia (the "Sending Property") to 207, 211, 219, 223 and 225 Thirteenth Street, N.E., Atlanta, Georgia (the "Receiving Property")

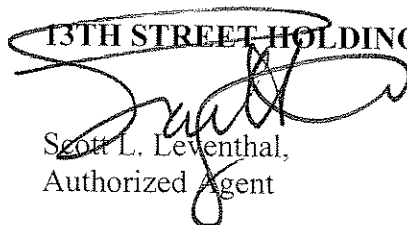
Dear Charletta:

This letter constitutes an agreement by 13th Street Holdings, LLC ("Applicant"), in the Application to execute or obtain the appropriate signatures for certain affidavits required by Section 16-28.023(4)(b)(i) and Section 16-28.023(4)(b)(iii) of the City of Atlanta Zoning Ordinance (collectively, the "Affidavit"), in substantially the same form attached hereto as Exhibit "A", for the purpose of transferring development rights from the Sending Property to the Receiving Property. The Receiving Property is currently under contract for purchase by Applicant, and to the extent Applicant does not own the Receiving Property at the time the City of Atlanta requires the Affidavit be provided, Applicant will obtain the executed Affidavit from the appropriate property owners.

Within thirty (30) days after the approval of the Application, Applicant shall provide the executed Affidavit to the City of Atlanta Bureau of Planning and the City of Atlanta Law Department to be recorded in the real property records in Office of the Clerk of Superior Court, Fulton County, Georgia. The recorded Affidavit shall provide notice of the Application approval and conditions and be binding upon Applicant, its successors, assigns and all subsequent owners of the Receiving Property.

I agree, on behalf of Applicant, its successors and assigns, to adhere to the terms of this letter agreement, as well as the other requirements placed on the Receiving Property by the Application.

Sincerely,


13TH STREET HOLDINGS, LLC
Scott L. Leventhal,
Authorized Agent

TIVOLI PROPERTIES, INC.

One Overton Park | 3625 Cumberland Boulevard | Suite 1150 | Atlanta, Georgia 30339

Telephone: 770-272-7600 | Telecopy: 770-272-7460

EXHIBIT A

**STATE OF GEORGIA
COUNTY OF FULTON**

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AFFIDAVIT WITH RESPECT TO REAL PROPERTY

In re: Special Use Permit approved pursuant to Application U-08-014 to transfer development rights from 990 Peachtree Street, N.E., Atlanta, Georgia, to 207, 211, 219, 223 and 225 Thirteenth Street, N.E., Atlanta, Georgia

Before me, a notary public, came Scott L. Leventhal, acting as the authorized agent of 13th Street Holdings, LLC (the "Owner") owner of the Receiving Property, who being duly sworn, says under oath the following:

1. That Owner owns that certain parcel of land known as 207, 211, 219, 223 and 225 Thirteenth Street, N.E., Atlanta, Georgia, as more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Receiving Property");
2. That the City of Atlanta has granted a special use permit pursuant to Application U-08-_____ (the "SUP") to transfer development rights from 990 Peachtree Street, N.E., Atlanta, Georgia, to the Receiving Property, a copy of which SUP approval is attached hereto as Exhibit "B";
3. That the approval of the SUP affects future development of the Receiving Property due to the transfer of development rights from 990 Peachtree Street, N.E., Atlanta, Georgia;
4. That Owner consents to the use of the development rights transferred pursuant to the SUP approval and all such rights sought to be utilized pursuant to the SUP are fully and unconditionally owned by the Owner;
5. That the development rights transferred in the SUP originally belonged to the property known as 990 Peachtree Street, N.E., Atlanta, Georgia, commonly known as the "Margaret Mitchell House" and "Commercial Row," and such development rights have been transferred pursuant to an agreement between the Atlanta History Center and Owner;
6. That Owner desires that any subsequent purchaser or lessee of the Receiving Property have knowledge of the restrictions, limitations and rights set forth in SUP and to be bound by the terms of the SUP to the same extent and as fully as if the same were covenants running with the land;
7. That this Affidavit is made with Owner's understanding that it will be relied on by the City of Atlanta in issuance of the SUP benefiting and restricting the Receiving Property and that the City of Atlanta Law Department shall record this affidavit with all attachments in the official real property records in the Office of the Clerk of Superior

Court, Fulton County, Georgia for the purpose of providing notice of record of the provisions of the SUP to all successors in interest and interested parties.

Sworn to and subscribed before me
this ____ day of _____, 2008

Notary Public

(Notarial Seal)

My Commission Expires: _____

By: _____
Scott L. Leventhal,
Authorized Agent

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Tivoli Thirteenth Street Apartments
207, 211, 219, 223 & 225 Thirteenth Street

Zoning: Midtown SPI-16, Subarea 2

Land Use Intensity Calculations

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Net Land Area: 37,151 s.f. (approx. .85 acre)

Gross Land Area:

Net Land Area: 37,151 s.f.

Land Increase Adjacent to ROW: 4103 s.f.

Total Gross Land Area: 41,254 s.f. (approx. .95 acre)

Residential Floor Area: 248,793 s.f.

Allowed Floor Area Ratio:

Onsite: $41,254 \times 3.2 = 132,012.8$ s.f.

Residential Density Transferred From
Atlanta Historical Society, Inc.: 116,781 s.f.

Total Allowed FAR: 248,793.8 s.f.

Total Open Space: GLA (1+2) -Building Footprint+ Balconies, Terraces and Pool
Building Footprint= 21,910 s.f.

Balconies, Terraces and Pool= 27,683 s.f.

TOS: $41,254 \text{ s.f.} - 21,917 \text{ s.f.} + 27,683 = 47,020 \text{ s.f.}$

TOS ratio: $47,020 \text{ s.f.} / 41,254 \text{ s.f.} = 1.14$

Useable Open Space: TOS- Road (2593 s.f.)

UOS: $47,020 \text{ s.f.} - 2593 \text{ s.f.} = 44,427 \text{ s.f.}$

UOS ratio: $44,427 \text{ s.f.} / 41,254 \text{ s.f.} = 1.08$

Parking: 347 spaces provided in parking deck
 $347 / 249 \text{ units} = 1.4 \text{ spaces per unit}$